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K-TEC, Inc.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

**K-TEC, INC.**, a Utah corporation,

Plaintiff,

vs.

**VITA-MIX CORP.**, an Ohio corporation,

Defendant.

**MOTION TO COMPEL  
VITA-MIX'S KNOWLEDGE OF  
K-TEC'S PATENT APPLICATION  
AND PUBLICATIONS**

Civil Case No. 2:06-CV-108

Chief Judge Tena Campbell  
Magistrate Judge Paul M. Warner

Plaintiff K-TEC, Inc. ("K-TEC") respectfully moves this Court to compel Defendant Vita-Mix Corporation ("Vita-Mix") to provide K-TEC with information relating to its knowledge of K-TEC's patent applications and publications that later became U.S. Patent No. 6,979,117 ("the '117 patent") and U.S. Patent No. 7,281,842 ("the '842 patent").

Vita-Mix's apparent position is that protected communications between an attorney and a client encompass the facts exchanged during those communications, and as such, those facts are not discoverable by an opposing party. This position is contrary to both common sense and established law.

Vita-Mix's awareness of the patent applications and publications that led to the patents in suit is unquestionably relevant to the issues of pre-issuance royalties and willful infringement. Even so, Vita-Mix has purportedly responded to an interrogatory propounded by K-TEC on the matter by stating only when its counsel became aware of the first issued publication – which was, Vita-Mix would like us to believe, upon K-TEC filing this suit. This response does not answer the interrogatory and at the very least raises concerns about its truthfulness. Additionally, Vita-Mix witnesses acted on instructions from counsel not to answer any questions about Vita-Mix's awareness – not even when Vita-Mix first became aware – of K-TEC's pending applications and publications.

Counsel for K-TEC sought during depositions to explain that Vita-Mix's awareness of these applications and publications, regardless of where they came from, is a fact not protected by any applicable privilege. These attempts proved unsuccessful, and K-TEC is now compelled to come before the Court to request that it grant the present Motion.

A memorandum supporting this Motion, as well as a certification under DUCivR 37-1, has been filed herewith.

Dated this 18th day of December, 2009.

HOLLAND & HART LLP

/s/ Brett L. Foster

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